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The International Institute for Middle-East and Balkan Studies (IFIMES) in Ljubljana, Slovenia, regularly analyses events in the Middle East and the Balkans. Dr Stane Vlaj, Assistant Professor at the Faculty of Administration of the University of Ljubljana, Director of the Institute of Local Self-Government and member of the IFIMES International Institute presents his view of the local self-government in Slovenia in the light of centralisation or decentralisation. His complete paper is published below.

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LOCAL SELF-GOVERNMENT IN SLOVENIA

- centralism or decentralisation -

Introduction

In Europe, local self-government has a several-century-long tradition comprising variegated regimes. The models of local self-government vary in the volume, structure, tasks and their relations to the state. Their common feature is that they rest on their own tradition and historical development. Different models of local self-government will also be present in the future for there is not and can not be a single model, not even within individual (federal) states. The European Charter on Local Self-Government (ECLS) and other documents of the Council of Europe and the European Union (Treaty establishing a Constitution for Europe) relating to local and regional communities respect the diversity of those models.

Local self-government made significant progress in the 20th century. It became the indicator of democracy in individual systems and contributed to the stability and security in Europe. As a special autonomous field of public law it forms the basis of the social system and the system of government in all modern European states. The re-established principle of subsidiarity, which led to the decentralisation of public issues to the most appropriate level, plays the decisive role in this

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process. The focus of attention is on the citizen equipped with modern rights, freedoms and new needs. The principle of subsidiarity constantly seeks the balance between the freedom of an individual and various authorities. Moreover, the principle of subsidiarity means that the state and international institutions, especially the EU, respect the role and position of local and regional authorities in a state. In accordance with the international law, the principle of subsidiarity is the fundamental principle in the European integration process.

Local self-government has replaced the municipal system

The municipal system, in which the municipality was the so-called socio-political community functioning mostly on behalf of the state while local self-government was partly implemented in local communities, was abolished with the introduction of the new municipalities. In its size, number of inhabitants, organisation and field of activities, the former municipality was hardly comparable to the classical municipality in Europe. Municipalities were too big to be regarded as classical municipalities and too small to assume the role of the first stage of state administration or the role of the regional community.

The former municipality performed most of the tasks on behalf of the state. Research has shown that there were over 3000 such tasks after 1974 and that municipal bodies carried out more than 80% of the activities for the state. In accordance with the constitution the municipality was competent for all public matters within its territory regardless of whether they were of local or general national importance, except those which the law explicitly placed within the competence of broader socio-political communities. The municipality thus functioned as an integral part of the state and its first instance.

The fact that the former municipality was not intended to engage in local issues and meet the local needs of the citizens obviously arises from the structure of municipal bodies and, especially, the municipal administration with its authorities and services which were in fact merely the extension of government departments. The examination of municipal decrees and other acts shows the same picture. The vast majority of those regulatory documents was intended only for the implementation of laws, regulations and administrative provisions.

The municipalities set up on that basis were on average several times bigger in size and the number of inhabitants than the average European municipality. Even as regards its territorial structure the former Slovenian municipality did not represent a natural local community. On average it had 31.740 inhabitants and covered the area of 321 km².

With the abolition of social ownership as the prevailing form of ownership, self-managing based on associated labour, delegational system, the prevailing role of the league of communists etc., which were replaced by the plurality of ownership, market economy, multi-party political plurality etc., the conditions were created for the abolishment of the former municipal system.

Local self-government has practically functioned since 1995

The Constitution of the Republic of Slovenia guarantees local self-government to the citizens of Slovenia. With this basic requirement, along with the regulation of human rights and fundamental freedoms and the division of authority, the Constitution places Slovenia among the states striving to ensure common European standards for defining and safeguarding the rights of local authorities which are the level of administration closest to the citizens enabling them to participate efficiently in the formation of decisions relevant for their daily life. The right of citizens to participate in public matters is one of the principles of democracy common to all democratic states. This right can be most immediately realised at the local level.

In Slovenia, local self-government has been in force since January 1995. The municipalities with changed territories, new contents and new bodies started to operate on 1 January 1995. The reform of local self-government in the Republic of Slovenia regarding the functional, territorial, financially-material, organisationally-administrative and legal contents has not been concluded in any of these aspects.

Many changes have happened in Slovenia in the past ten years, especially in the legislative field: ratification of ECLS, ratification of the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities in 2003, elimination of initial difficulties in the functioning of municipal bodies, completion of the network of new municipalities, preparation of the bases for the introduction of regions, etc. On 1 May 2004 Slovenia became a full member state of the EU. The Capital City of the Republic of Slovenia Act as well as new acts in the field of public administration, which have an important impact on the position of municipalities, their bodies and administrations, were adopted.

The reform of local self-government in the Republic of Slovenia is not a one-off act but a complex and dynamic process which will continue in the future. Local self-government was introduced in a very short period. It should be pointed out that, mainly due to various political interests, the functional, financial and regional contents of this reform were neglected.

The introduction of local self-government was accompanied also by problems stemming from disagreements in the preparation of the necessary legislation as well as from the new values and methods of operation which can not be adopted in such a short time. We should be aware that such a turning point implies a complete functional, territorial, material and organisational reform of the social foundations.

The confrontation between the centralists and the regionalists

Two opposing movements have been constantly present in the debate on local self-government in the Republic of Slovenia: the centralistic and the regionalistic (decentralistic) movements. The most disputable issue was the so-called regionalism. The question was whether there should be one or two levels of local self-government in the Republic of Slovenia. As regards the new municipalities, the question was whether they should have large or minor competences, i.e. whether municipalities should be large or small. The essential conflict was whether Slovenia should have a strong local self-government which would represent an appropriate counter balance to state centralism or only a weak local self-government which would enable centralistic administration of the state. In those dilemmas the national politics never achieved the consensus on the basis of which a clear formulation on local self-government could be included in the Constitution and the Local Government Act (ZLS).

After long years of living in municipalities as communities, the inhabitants had difficulties in understanding the new local self-government in which they often still expect the municipality to act as the extension of the government administration.

The implementation of local self-government is a demanding task. It mostly concerns the division of competence between the state and local communities, which implies also the regulation of rational financial and ownership flows and of the relations between the two levels. However, the absence of wider self-government local communities in Slovenia represents a pressing problem which can not be avoided. The true role of local self-government lies in the vertical division of authority. With the division of authority between the state and the local communities, the power of the state (the centre) is limited in such a way that there are fewer possibilities for the alienation or misuse of that power.

Elements of the reform

The reform of local self-government in Slovenia comprises five elements: the functional, territorial, organisational, financially-material and legal component.

The functional element includes the redistribution of competences between the state and the municipalities as the basic local self-government communities and the implementation of the principle of subsidiarity with the decentralisation process which has been initiated.

The territorial aspect covers the creation of new municipalities which have replaced the former communes. From the former 62 communes, 147 new municipalities were formed in 1994, followed by 45 additional municipalities in 1998 and another one in 2002. Altogether there are 193 municipalities in Slovenia today, but they are not all formed in accordance with the legal standards. Half of them have less than 5000 inhabitants and not all of them have a complete primary school, primary health care centre or health station, bank, post office, appropriate facilities for the work of the municipal bodies, etc.

The organisational component deals with the new arrangement regarding the organisation of authority in the municipality which is composed of bodies (directly elected municipal council and mayor, supervisory board) and the forms of indirect citizens' participation in the municipality decision making (citizens' assembly, referendums and civil initiative).

The financially-material aspect incorporates the implementation of principles of proportionality of funds to the tasks of local communities, solidarity with the less developed municipalities, the right to own sources of local communities etc.

The legal element deals with the status of the municipality as the legal person governed by public law and its integration in the complex legal system of the Republic of Slovenia.

None of the above elements of local self-government in Slovenia have been completely realised. It should be noted that the territorial aspect has been overemphasised while not enough attention has been paid to the functional, regional and financial elements.

Tasks of the municipality

In comparison with the former municipalities the tasks of the new municipality are focused on the local matters of public importance which are laid down by the municipality general act or by law. According to the Constitution of the Republic of Slovenia, the municipality is competent for local affairs which can be regulated autonomously by the municipality and which affect only the residents of the municipality. The Constitution also lays down that the state may, with the municipality's or wider self-governing local community's prior consent, vest by law specific duties within the state jurisdiction in the municipality or wider self-governing local community, if the state provides financial resources to this end. During the initial period of functioning of the new municipalities it was hard to expect that the municipality could take over certain matters, since the material and human

resource conditions were not adequate. However, the municipalities have recently established that they are qualified to take over from the state jurisdiction those matters which would be carried out more expediently and rationally in municipalities, including the fields of spatial planning, agriculture, small business, tourism, public events, opening hours and other. From the point of view of ECLS and modern tendencies in Europe in the field of local self-government it can be concluded that there are numerous matters which should be decentralised on the analytical basis by transferring them from the state to municipal jurisdiction, especially to urban municipalities.

In other states the legislation vests the municipalities and regions with more or less freedom in determining the level and volume of public matters they are to manage. Some laws are merely framework documents and enable wide possibilities of application. On the other hand, some laws vest the municipalities and regions with special matters in which they allow them few possibilities. Municipalities also carry out the tasks not laid down by law and those not vested in them by the state.

Abroad, municipalities are usually competent for public utility, social care, health services, support to private economic activities (e.g. providing locations for economic and trade activities), ensuring collective use for the local community residents (e.g. solidarity and non-profit making housing for underprivileged parts of society) and maintaining social order (e.g. supporting persons in difficulties). The scope of activities of local self-government is relatively large covering most of the tasks relevant for the daily life of the people. The regions or other levels of local self-government are vested with the competences affecting a larger number of the population and covering harmonisation and planning beyond local borders concerning transport, hospitals, secondary education, regional planning etc. The matters within the jurisdiction of municipalities and regions are laid down in laws for each field.

Financing of municipalities

Financial resources are essential for evaluating the reality of local self-government. Local authorities must have a high degree of autonomy in their competences, the manner and means for realising those competences and the necessary resources for their completion. Financial autonomy requires enhanced competence of local communities and at the same time democratic control of their expenditure. Financial autonomy also means that local communities collect the minimum of taxes within their territory and on the other hand requires satisfactory management of local public services responsible for the public good.

Financial resources must be proportional to the competences which the Constitution and the laws vest in local communities. Many European states are still a long way from applying the principle of subsidiarity and the provisions of ECLS. Public expenditure of local communities ranges from 1,4% (Cyprus) to 27,5% (Sweden) of the gross domestic product while it is below 10% only in twelve states. In those states, the share of that expenditure in the total public expenditure, which provides a better view of the degree of decentralisation in the public sector, is below 15% and in 5 states even below 10% although it should be taken into account that transferred competences are already included in these figures.

In Slovenia, public expenditure of municipalities in 2004 accounts for 5% of GDP and about 12% of the total public expenditure. Expenditure for investments amounts to 43% of the total municipal public expenditure, 11,20% of total expenditure for investments and 1,89% of GDP. Comparison of those shares in different European states shows that Slovenia is among those at the bottom of the scales. This also shows that the Slovenian local self-government is still in its early stages. The decentralisation of public matters and their transfer to the local communities together with appropriate funds will enable a different (more favourable) evaluation.

Slovenian municipalities are financed pursuant to the Financing of Municipalities Act which was adopted in 1994 as a temporary act before the new municipalities started to operate. The main content of the Act was the financing of essential tasks (the so-called ensured expenditure and from 1998 appropriate expenditure), defining the criteria for the financing of essential tasks and financial equalisation based thereupon, i.e. state budget funds intended for the operating of municipalities. The 1998 amendments to the Financing of Municipalities Act include a more objective definition of the equalisation of municipalities regarding their size, number of residents, number of residents aged below 15 and above 65 and the length of local roads, all in comparison with the national average. Appropriate expenditure is calculated on the basis of a special equation which includes above corrective factors. A new act on the financing of municipalities is in preparation at the moment.

The ratification of ECLS also calls for the changes in the system of financing of municipalities. Article 9 of ECLS contains the following eight principles which the signatory states must respect in the formation of national legislation in the field of financing of local communities: Firstly, the principle of adequacy requires that local communities have adequate financial resources of their own, of which they may dispose freely within the framework of their powers. Secondly, the principle of commensurability requires that local communities' financial resources are commensurate with the responsibilities provided for by the constitution and the law. Thirdly, the principle of self-financing requires that at least a part of the financial resources of local authorities derives from local taxes and other charges of which, within the limits of laws, they have the power to determine the rate. Fourthly, the principle of flexibility requires that the financial resources of local communities are sufficiently diversified and flexible to enable them to keep pace as far as practically possible with the actual evolution of the cost of carrying out their tasks. Fifthly, the principle of equalisation requires that the state applies not only financial equalisation but also other appropriate measures in order to ensure equalisation between local communities in the financing of local matters. Sixthly, the principle of participation requires that local communities are consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them. Seventhly, the principle of autonomy requires that the funds which the state grants to local communities are not earmarked strictly for the financing of specific projects. And eighthly, the principle of borrowing requires that local communities have, for the purpose of borrowing for capital investments, access to the national capital market within the limits of the law.

Regions - the second level of local self-government in Slovenia

The implementation of the principle of subsidiarity includes also the discussion on the regionalisation of Slovenia. In a unitary state like Slovenia the question of regionalisation is how to find the intermediate level between municipalities, communities and the state. In the Republic of Slovenia there are no wider self-governing local communities (regions) nor administrative districts. Consequently, a vacuum has occurred between the state and the municipality which is negatively reflected both in the fields within the jurisdiction of local self-government and within the jurisdiction of the state. This has resulted in a high level of centralisation: the decentralisation of the municipal system has been replaced by the centralisation in the central state authorities. The consequences of such a system are systemic inefficiency in carrying out public matters, the tendency of border regions to ally with their counterpart regions across the national border, as well as constant economic, political and other pressures on the state centres.

The inhabitants of Slovenia exercise local self-government in municipalities and other local communities. Municipalities are the basic units of local self-government which may independently

decide to join into wider self-governing local communities, as well as regions, in order to regulate and manage local affairs of wider importance (Article 143 of the Constitution). Wider self-governing communities may in addition perform also specific tasks within the state competence which the state has vested in the region after its prior approval and in accordance with law together with the funds necessary for carrying out those tasks. In agreement with the regions, the state may transfer specific matters within the state competence to original competence of regions and determine the participation of such communities in proposing and performing particular matters within the state competence. The principles and criteria regarding the transfer of those competences are regulated by law.

The regionalisation, i.e. creation of regions, is necessary mostly in order to resolve faster the internal development problems and implement the principle of subsidiarity by ensuring the decentralisation process as the basis for a quick and harmonious development of the whole Slovenia. The need for regionalisation arises also from the changes which took place during the period after local self-government was put into force. The number of municipalities increased, their structure changed, their competences were centralised (except for the competences of local importance) and the difference in the economic development between Slovenian municipalities increased.

Regions are intended to fill in the vacuum between the small municipalities and the state and mitigate the present excessive power of the state over the weak municipalities. Their aim is to bring municipalities together in order to enable a more efficient management and realisation of the needs of citizens and the economy which are beyond the capabilities of individual municipalities.

Regions carry out the tasks which municipalities are not capable of performing since they exceed their human resource, technical, organisational and financial capabilities. Those tasks are within the original competence of regions as they can perform them on their own without the transfer from municipalities which are not competent for carrying out the tasks of wider local communities (regions). Nevertheless, municipalities may transfer certain tasks from their original competence to regions. The original tasks of regions cover environmental protection, spatial planning, transport and communications, agriculture and, notably, regional development. Moreover, regions carry out the tasks transferred to them by the state on the basis of the principles of subsidiarity and decentralisation, the tasks laid down by law as the original tasks of regions as well as the tasks referred to municipalities in their role as the first instance of the state jurisdiction.

Slovenia needs regions in order to be comparable with the EU states and to be able to tender successfully for the EU regional development funds. The creation of regions enables Slovenia as an EU member state to co-operate with other European regional centres on an equal basis.

Cross-border co-operation of local and regional communities also calls for the creation of regions. The absence of regional organisation, incompatibility of the Slovenian administrative system with the neighbouring states and lack of organised public infrastructure which would facilitate the establishing and deepening of contacts and co-operation, represent one of the key barriers for developing cross-border co-operation.

Various models have been prepared for the division of Slovenia into regions.

Proposals for further development of local self-government in Slovenia

Since local self-government in Slovenia has been limited by centralism, the latter should be dealt with from the points of view of territorial division of municipalities, the reduced role and influence of municipalities and the failure to recognise regions. On the basis of the analysis of local self-government in the Republic of Slovenia and its comparison with the European experiences and tendencies, the following proposals have been prepared for the continuation of the reform:

Since the problems of Slovenian local self-government stem from the Constitution, some of the articles of Chapter V should be amended so that it would contain clear provisions regarding the establishment of regions, transfer of state tasks to local communities (without their approval) together with appropriate funds and the realisation of the state's administrative tasks also in local communities. All the provisions which are incorrect and misleading in comparison with the European standards and which strengthen centralism in Slovenia should be removed from the Constitution.

Further reform should be based on the recent sociological knowledge which surpasses the local narrowness backed by Slovenia's laws. It should move from the concept of "territory of localities" to the concept of "territory of flows", from the "old" (closed) to the "new" (open) localism. It should apply the concepts of "new regionalism" and "teledemocracy" which change the previous concept of direct and indirect democracy. The "new political culture" should replace the rigid and hierarchical territorial organisation, weaken the role of political parties and strengthen the role of various groups which go beyond the local and national boundaries. In the long run these concepts indicate the vision of the creation of a global civil society.

In accordance with the principle of subsidiarity and other European standards contained in the ratified ECLS, municipalities should be protected in all aspects in the Slovenian legislation on local self-government and in practice from the interference of the state with their competences and fixed and stable material resources should be ensured for their functioning. The present inability of the state to deal with the demands for new and ever smaller municipalities should be overcome by legal provisions which would determine the establishment of municipalities within certain reasonable territorial limits. The complete professionalisation of mayors and administrative apparatuses even in the smallest municipalities is also in contradiction with the modern European tendencies.

The imposition of solutions by the state or municipalities (local narrowness backed by the laws) can only be eliminated with a dialogue and partnership co-operation which enables the convergence of general and concrete interests and thus a dynamic relationship in which the state authorities carry out the matters of national importance while the municipal authorities deal with the matters of local relevance. Nevertheless, the municipalities should be encouraged to enter the wider sphere and assume the responsibility for resolving the issues also at the national and global level.

Recommendations of the Congress of Local and Regional Authorities of Europe (CLRAE)

In May 2001 the Congress adopted the recommendations for Slovenian authorities regarding the further development of local and regional democracy in the Republic of Slovenia.

CLRAE recommends the Slovenian authorities to:

- ensure local communities (municipalities) their own financial resources,
- more strictly respect the criteria laid down by the Local Government Act in the creation of new municipalities and prevent further fragmentation,
- achieve co-operation between the Ministry of Finance and Ministry of the Interior, especially concerning the financing of local communities, and include local communities in those discussions and in the preparation of various other laws in the field of local and regional self-government,
- fully respect Article 10 of ACLS on the right of local communities to associate and resolve the issue of their representativity in associating,

- to lay down clear powers for the regions, the establishment of which the Council of Europe supports; in accordance with the principle of subsidiarity the municipalities should transfer to the regions only those tasks which they are not able to perform on their own due to their size,
- vest in the regions which should have at least 100,000 inhabitants, as envisaged in the coalition agreement (of the previous government - author's note), numerous powers of the state administration, i.e. the majority of present competences of administrative units,
- ensure sufficient funds to the regions and respect the ECLS provision on direct election of regional councillors in the preparation of legislation,
- strengthen cross-border co-operation between the Slovenian, Austrian, Croatian, Hungarian and Italian local and regional communities and ratify as soon as possible the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities including the two Protocols (already ratified in 2003),
- continue with good work and efforts to protect ethnic communities.

Conclusions

The weaknesses of the Slovenian local self-government are:

- the above recommendations of the Council of Europe have not been satisfactorily realised;
- the decentralisation process has not started and therefore the principle of subsidiarity as the fundamental principle of ECLS and the EU Constitution has not been implemented;
- technical proposals for constitutional changes in the field of local self-government have not been adopted;
- the act on regions and the act establishing the regions and defining their territories have not entered the legislative procedure;
- the (new) act on local government and the (new) act on encouraging a harmonious regional development have not been adopted;
- the proposal for a new act on the financing of municipalities has not been prepared;
- the field of local self-government has not been included in the competences of the Ministry for Public Administration.

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